

REMARKS

The present amendment is submitted in response to the Office Action mailed July 27, 2007. Claims 1-10 are currently pending in the application. No new matter or issues are believed to be introduced by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Double Patenting Rejection

In the Office Action, Claims 1 – 6 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 8 of U.S. Patent No. 20050163023 (hereinafter the ‘023 patent) respectively in view of U.S. Patent Application No. 2005/016023 to Miyamoto et al. – hereinafter Miyamoto.

In making the rejection, the Examiner contends that, regarding claim 1, “*the only difference between the two claims in the table provided and claim 1 is that claim 2 of the ‘023 patent specifies about the thickness of the transparent spacer layer in detail*”. The Examiner further contends that – “*Other than that, both sides of the table show an optical data storage medium with dual layers and a transparent layer in between .*”

However, for the reasons discussed below, the Applicants respectfully disagree and traverse the rejection.

Claim 1 of the ‘023 patent recites –

1. An optical data storage medium (20) for recording by means of a focused radiation beam (9) entering the medium through a first plastic/resinous layer (1) which is transparent for the radiation beam (9), said medium further comprising at least: a first recording stack (2),

comprising a first recording layer, being present proximate the first plastic/resinous layer, a second recording stack (4), comprising a second recording layer, said second recording stack (4) being present at a position more remote from the first plastic/resinous layer (1) than the first recording stack (2), a transparent spacer layer (3) between the first and the second recording stack having a thickness larger than the depth of focus of the focused radiation beam **characterized in that a first optically transparent thermal barrier layer (b 1) is interposed between the first recording stack and the first plastic/resinous layer.** [Emphasis Added]

The '023 patent is directed to providing an optical data storage medium which does not or hardly suffer from stress birefringence in the first plastic/resinous layer caused by the radiation beam (See Par. 9 of the '023 patent). Further evidence for supporting Applicant's contention is provided in Par. 10 of the '023 patent which recites –

[10]A first thermal barrier layer between the first recording stack, i.e. the upper L0 recordable stack, and the first plastic/resinous layer, e.g. the upper polycarbonate substrate, is proposed for use in a single-sided and double-sided dual-layer DVD+R, DVD+R+RW and DVD+R-ROM optical storage medium. The thermal barrier layer will eliminate stress birefringence in the upper polycarbonate substrate upon writing in the upper L0 layer, thus allowing optimum optical access to the lower L1 layer. [Emphasis Added]

Clearly, the '023 patent is directed to overcoming the problem of stress birefringence in the upper polycarbonate substrate.

Accordingly, Applicants respectfully refute the Examiner's contention that - *“the only difference between the two claims in the table provided and claim 1 is that claim 2 of the '023 patent specifies about the thickness of the transparent spacer layer in detail”*.

In contrast to the afore-mentioned novel feature of the '023 patent, the present invention is silent with respect to reducing stress birefringence. Nowhere in the disclosure of the present application is this issue addressed.

Accordingly, it is respectfully requested that the rejection on the grounds of nonstatutory obviousness-type double patenting of Claim 1 be withdrawn, and independent claim 1 be allowed.

Claims 2-6 depend from independent Claim 1 and therefore contain the limitations of Claim 1 and are believed to be in condition for allowance for at least the same reasons given for Claim 1 above. Accordingly, withdrawal of the rejections of claims 2-6 and allowance of Claims 2-6 is respectfully requested.

35 U.S.C. §103(a)

In the Office Action, Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application 2001/0016242 A1 to Miyamoto et al – hereinafter Miyamoto, in view of U.S. Patent Application 2001/0005350 to Kitaura et al. – hereinafter Kitaura.

As discussed in a phone conversation with the Examiner and the Examiner's Supervisor on October 29, 2007, Applicants are unable to address the instant rejection for the following reasons.

In the rejection of these claims, starting at par. 3 of page 8 of the Office Action, the Examiner has apparently compared the cited references, with the claims cited in the

reference used in the double patenting rejection, instead of the claims of the instant invention. In other words, the Examiner's arguments compare Miyamoto and Kitaura with U.S. Patent No. 20050163023 (the '023 patent), issued to Van Den Oetelaar, instead of comparing compare Miyamoto and Kitaura with the claims of the instant invention.

For example, in par. 3, page 8 of the instant Office Action, the Examiner asserts -

Miyamoto teaches an optical storage data medium for recording by means of a focused radiation beam entering the medium through a first plastic/resinous layer which is transparent for the radiation beam, the medium further comprising at least: a first recording stack, comprising a first recording layer, being present proximate the first plastic/resinous layer, a second recording stack, comprising a second recording layer, said second recording stack being present at a position remote from the first plastic/resinous layer, said second recording stack being present at a position more remote from the first plastic/resinous layer than the first recording stack, a transparent spacer layer between the first and the second recording stack.

It is respectfully submitted that this rejection does not begin to address the elements of claim 1.

Claim 1 recites –

1. A dual stack optical data storage medium for recording and reading by means of a focused radiation beam entering the medium through a first radiation beam entrance face, said medium having at least a first substrate with on at least one side of the first substrate:

a first layer stack, comprising a first information layer,

a second layer stack, comprising a second information layer,
said first layer stack being present at a position closer to the first radiation beam entrance face than the second layer stack,
a first transparent spacer layer between the first layer stack and the second layer stack,

characterized in that the first information layer is one selected from the group of types consisting of a read only layer and a write once layer, and that the second information layer is one selected from the group of types consisting of a read only layer, a write once layer and a rewritable layer, and that the type of the first information layer is different from the type of the second information layer.

The object of the invention, is clearly stated in Applicant's specification and in claim 1. The specification clearly states at page 2 –

It is an object of the invention to provide a dual stack optical data storage medium of the type mentioned in the opening paragraph which is compatible with a dual stack ROM version of said medium and has a rewritable portion or read only portion. The object is achieved by a dual stack optical data storage medium according to the invention which is characterized in that the first **characterized in that the first information layer is one selected from the group of types consisting of a read only layer and a write once layer, and that the second information layer is one selected from the group of types consisting of a read only layer, a write once layer and a rewritable layer, and that the type of the first information layer is different from the type of the second information layer.**

It is respectfully submitted that the rejection of claim 1 in the instant Office Action does not address the elements of claim 1, which recites the novelty of the invention. In particular, the Office Action does not address the issue of a first information layer being of a particular type (e.g., read only, write once) or a second information layer being of a certain other type (e.g., read only, write once, rewritable).

Instead, as described above, the Office Action rejection is concerned with a plastic resinous layer, which is a feature of the '023 patent, not the invention.

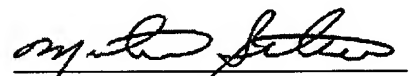
It is therefore respectfully submitted that Applicant's are not in a position to be able to respond to the Office Action and assert that the cited references do not address issues relevant to the claims of the invention and respectfully request that the Examiner perform a further search in an attempt to find references that may be relevant to the claims of the instant invention. Applicants' have reviewed the cited references and have concluded that the references, alone and in combination, are silent with respect to information layer types (i.e., read only, write once, rewritable).

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1-10 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Mike Belk, Esq., Intellectual Property Counsel, Philips Electronics North America, at 914-945-6000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Belk", is written over a horizontal line.

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